

- (1) Whether claimant's shoulder injury arose out of and in the course of his employment, stemming from the therapy provided for claimant's back.
- (2) Whether claimant suffered accidental injury on August 2, 1996.
- (3) Whether claimant's accidental injury arose out of and in the course of his employment.

- (4) Whether claimant provided notice as is required by K.S.A. 44-520.
- (5) Whether the Workers Compensation Act applies to an injury which respondent alleges occurred in Missouri after the creation of a Missouri employment contract.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the evidence presented and for purpose of preliminary hearing, the Appeals Board finds as follows:

The Appeals Board finds for the purpose of preliminary hearing that the Order of the Administrative Law Judge should be affirmed.

The evidence in this matter is convoluted and contradictory. Claimant alleges that he slipped and fell on August 2, 1996, while exiting a van. Claimant described a fall during which he allegedly came into contact with his employer Mr. Cody. Mr. Cody, who also testified in front of the Administrative Law Judge along with the respondent's bookkeeper Ms. Lynch, denied any such incident. Ms. Lynch verified that claimant advised her he had suffered an injury to his shoulder but denied that claimant ever advised her the shoulder injury was work related. The medical records are every bit as confusing as the testimony of the witnesses. Doctor reports seem to verify that claimant suffered some type of an injury to his shoulder and back but are contradictory regarding the time frame involved.

In this case the only three witnesses to testify were the claimant; Mr. Robert J. Cody, President of respondent company; and, Ms. Mary Lynch, bookkeeper of the respondent company. All three testified in the presence of the Administrative Law Judge. When contradictory testimony clouds the record, the credibility of the witnesses becomes vital to the fact finders decision making process. The Administrative Law Judge, having the opportunity to observe these witnesses, is in the enviable position of assessing the credibility of testimony of one witness over that of another. In this instance, the Administrative Law Judge appears to have believed the testimony provided by claimant over the contradictory testimony of respondent's representatives. In order for claimant to succeed in his burden, his testimony regarding the accident, when and where it occurred, whom he told, what symptoms and injuries he suffered, and how the contract of employment was formed, all must be believed over the testimony of the other witnesses. The Appeals Board, in adopting the findings of the Administrative Law Judge, concedes the Administrative Law Judge's advantage in assessing the credibility of witnesses he or she has observed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Bryce D. Benedict dated February 27, 1997, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of April 1997.

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BOARD MEMBER

c: John J. Bryan, Topeka, KS  
Michael J. Joshi, Kansas City, MO  
Bryce D. Benedict, Administrative Law Judge  
Philip S. Harness, Director